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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON
U.S. COURT OF APPEALS

GREGG WILKINSON,

Plaintiff - Appellant,

v.

**SERVICE MANAGEMENT SYSTEMS,
INC., a Tennessee Corporation,**

Defendant - Appellee.

No. 02-35779

D.C. No. CV-00-00214-RFC

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Richard F. Cebull, District Judge, Presiding

Argued and Submitted October 9, 2003
Seattle, Washington

Before: **D.W. NELSON, KOZINSKI** and **McKEOWN**, Circuit Judges.

According to plaintiff, just three days after he cooperated with OSHA's inspection of Rimrock Mall, defendant gave him an ultimatum: He could accept a geographic transfer or quit. Plaintiff had until noon the following day to make his decision. Defendant immediately took away plaintiff's keys, and barred him from

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contacting his co-workers and entering the premises. A jury could infer from these facts, if proved at trial, that the geographic transfer was a pretext and defendant was simply looking for an excuse to fire plaintiff in retaliation for his cooperation with the OSHA inspection. “[T]he evidence, viewed in a light most favorable to [plaintiff], presents . . . genuine issues of material fact . . .” Warren v. City of Carlsbad, 58 F.3d 439, 441 (9th Cir. 1995).

REVERSED.